



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R10-RCRA-2021-0439; FRL-8853-01-R10]

Oregon: Proposed Authorization of State Hazardous Waste Management Program

Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Oregon has applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. EPA has reviewed Oregon's application, and has determined that these changes satisfy all requirements needed to qualify for authorization. Therefore, we are proposing to authorize the State's changes. EPA seeks public comment prior to taking final action.

DATES: Comments on this proposed rule must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-RCRA-2021-0439 through the *Federal eRulemaking Portal*: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is

considered the official comment and should include all points the commenter wishes to make.

EPA will generally not consider comments or comment contents located outside of the primary submissions (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<http://www2.epa.gov/dockets/commenting-epa-dockets>. The EPA encourages electronic

submittals, but if you are unable to submit electronically or need other assistance, please contact Margaret Olson, the contact listed below. Please also contact Margaret Olson if you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you.

FOR FURTHER INFORMATION CONTACT: Margaret Olson, U.S. Environmental Protection Agency, Region 10, Oregon Operations Office, 805 SW Broadway, Suite 500, Portland, Oregon 97205, phone number: (503) 326-5874, e-mail: olson.margaret@epa.gov .

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take

effect in authorized states at the same time that they take effect in unauthorized states. Thus, EPA will implement those requirements and prohibitions in Oregon, including the issuance of new permits implementing those requirements, until the State is granted authorization to do so.

B. What decisions has EPA made in this rule?

On October 16, 2020, Oregon submitted a complete program revision application seeking authorization of changes to its hazardous waste program that correspond to certain Federal rules promulgated between October 22, 1998 and April 17, 2015. EPA is proposing to determine that Oregon's application to revise its authorized program meets all the statutory and regulatory requirements established by RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, EPA proposes to grant Oregon final authorization to operate its hazardous waste program with the changes described in the authorization application, and as outlined below in Section G of this document. Oregon has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of HSWA, as discussed above.

C. What Is the effect of this proposed authorization decision?

If Oregon is authorized for the changes described in Oregon's authorization application, these changes will become part of the authorized State hazardous waste program and will therefore be federally enforceable. Oregon will continue to have primary enforcement authority and responsibility for its State hazardous waste program. EPA would maintain its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses and reports;
- Enforce RCRA requirements, including authorized State program requirements;
- Suspend or revoke permits; and

- Take enforcement actions regardless of whether the State has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations which EPA is proposing to authorize in Oregon are already effective under state law and are not changed by today's proposed action.

D. What happens if EPA receives comments that oppose this action?

If EPA receives comments on this proposed action, we will address all such comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you should do so at this time.

E. What has Oregon previously been authorized for?

Oregon initially received final authorization on January 30, 1986, effective January 31, 1986 (51 FR 3779), to implement the RCRA hazardous waste management program. EPA granted authorization for changes to Oregon's program on March 30, 1990, effective on May 29, 1990 (55 FR 11909); August 5, 1994, effective October 4, 1994 (59 FR 39967); June 16, 1995, effective August 15, 1995 (60 FR 31642); October 10, 1995, effective December 7, 1995 (60 FR 52629); September 10, 2002, effective September 10, 2002 (67 FR 57337); June 26, 2006 effective June 26, 2006 (71 FR 36216); and January 7, 2010, effective January 7, 2010 (75 FR 918).

F. What changes are we proposing with today's action?

On October 16, 2020, Oregon submitted a final complete program revision application, seeking authorization of changes to its hazardous waste management program in accordance with 40 CFR 271.21. EPA proposes to determine, subject to receipt of written comments that oppose this action, that Oregon's hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the federal program, and therefore satisfy all the requirements

necessary to qualify for final authorization. Therefore, EPA is proposing to authorize Oregon for the following program changes as identified in the list below.

Description of Federal Requirement and Checklist ¹ Number	<u>Federal</u> <u>Register</u> date and page (<i>and/or</i> <i>RCRA</i> <i>statutory</i> <i>authority</i>)	Analogous State Authority
NA – Hazardous Waste Manifest Printing Specifications Correction Rule.	76 FR 36363 6/22/11	OAR 340-100-0002
174 – partial adoption - Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities: Post-Closure Permit Requirement; Closure Process	63 FR 56710 10/22/98	Oregon Revised Statutes 465.009, 465.505, and 466.020 OAR 340-100-0002
203 – Used Oil Management Standards	75 FR 76633 9/8/05	Oregon Revised Statutes 465.009, 466.020, 465.505 OAR 340-100-0002

210 - Standardized Permit for RCRA HW Management Facilities	70 FR 53420 9/8/05	Oregon Revised Statutes 465.009, 466.020, 465.505 OAR 340-100-0002 / OAR 340-100-0001(3) / OAR 340-100-0004 / OAR 340-101-0001(2) / OAR 340-101-0030 / OAR 340-102-0010(2) - (3) / OAR 340-104-0001(2) / OAR 340-105-0001(2) / OAR 340-106-0001(2) / OAR 340-109-0001(2) / OAR 340-111-0010(3)(d)
217 – NESHAP: Standards for RCRA HW Management Facilities	73 FR 18970 4/8/08	Oregon Revised Statutes 465.009, 466.020, 465.505 OAR 340-100-0002
218 – Amendment to Hazardous Waste Code F019	73 FR 31756 6/4/08	Oregon Revised Statutes 465.009, 466.020, 465.505 OAR 340-100-0002
220 ² – Academic Laboratories Generator Standards	73 FR 72911 12/1/08	Oregon Revised Statutes Chapters 183, 192, and 459, and Sections 465.009, 465.505, 466.015, 466.020, 466.075, 466.090, 466.105, 466.165, 466.195, 468, and 646. OAR 340-100-0002 / 340-102-0200(1)-(4)
222 – Export Shipments of Spent Lead-Acid Batteries	75 FR 1236 1/9/10	Oregon Revised Statutes 465.009, 466.020, 465.505 OAR 340-100-0002

223 - Hazardous Waste Technical Corrections and Clarification Rule	75 FR 12989 3/18/10	Oregon Revised Statutes 465.009, 466.020, 465.505 OAR 340-100-0002
224 – Withdrawal of the Emissions Comparable Fuel Exclusion	75 FR 33712 6/5/10).	Oregon Revised Statutes 465.009, 465.505, 466.020 OAR 340-100-0002
225NA – Removal of Saccharin and its Salt from the Lists of Hazardous Constituents	75 FR 78918 12/17/10	Oregon Revised Statutes 465.009, 466.020, 465.505 OAR 340-100-0002
226 - Academic Laboratories Generator Standards Technical Corrections;	75 FR 79304 12/20/10	Oregon Revised Statutes Chapter 183, Chapter 192, Chapter 459, 465.009, 465.505, 466.015, 466.020, 466.075, 466.090, 466.105, 466.165, 466.195, Chapter 468, Chapter 646 OAR 340-100-0002
227 – Revision of the Treatment Standards for Carbamate Wastes	76 FR 34147 6/13/11	Oregon Revised Statutes 465.009, 466.020, 465.505 OAR 340-100-0002
228 – Hazardous Waste Technical Corrections and Clarifications Rule	77 FR 22229 7/31/13	Oregon Revised Statutes 465.009, 466.020, 465.505 OAR 340-100-0002

229 ² – Conditional Exclusions for Solvent-Contaminated Wipes	78 FR 46447 7/31/13	Oregon Revised Statute 192, 465.009, 465.505, 466.015, 466.020, 466.075, 466.090, 466.180, 468.020, and 646 OAR 340-100-002 / OAR 340-101-0004(3)-(5)
231 – Modifications of Hazardous Waste Manifest System: Electronic Manifest	79 FR 7518 2/7/14	Oregon Revised Statutes 465.009, 466.020, 465.505 OAR 340-100-0002 / OAR 340-100-0002(2)
232 – Revisions to the Export Provisions of the Cathode Ray Tube	78 FR 36220 6/26/14	Oregon Revised Statutes 465.009, 466.020, 465.505 OAR 340-100-0002
234 – Vacatur of the Comparable Fuels Rule and the Gasification Rule	80 FR 18777 4/8/15	Oregon Revised Statute 465.009, 465.505, 466.020 OAR 340-100-0002
235 – Disposal of Coal Combustion Residues from Electric Utilities	80 FR 21301 4/17/15	Oregon Revised Statute 465.009, 465.505, 466.020 OAR 340-100-0002

¹ The Checklist is a document that addresses the specific changes made to the Federal regulations by one or more related final rules published in the Federal Register. The EPA develops these checklists as tools to assist states in developing their authorization application and in documenting specific state regulations analogous to the Federal regulations. For more information, see the EPA's RCRA State Authorization website at <https://www.epa.gov/rcra/state-authorization-under-resource-conservation-and-recovery-act-rcra#about>.

² State rule contains more stringent and/or broader in scope provisions. For identification of

these provisions refer to the authorization revision application's Attorney General Statement and Checklists found in the docket for this proposed rule. Some of these provisions are discussed in Section G of this rule.

G. Where are the revised State rules different from the Federal rules?

When revised state rules differ from the Federal rules in the RCRA state authorization process, EPA determines whether the state rules are equivalent to, more stringent than, or broader in scope than the federal program. Pursuant to RCRA Section 3009, 42 U.S.C. 6929, state programs may contain requirements that are more stringent than the federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable.

The following Oregon provisions documented in this authorization action are more stringent than the Federal program:

- Oregon is more stringent than the Federal program at OAR 340-102-0041(2) by requiring annual reporting rather than biennial reporting.
- Oregon is more stringent than the Federal program at OAR 340-102-0200(4) which requires when opting-in to Subpart K, an eligible academic entity is required to submit their completed Laboratory Management Plan as defined in 40 CFR 262.214.
- Oregon is more stringent than the Federal program at OAR 340-102-0200(2) which requires container labels be affixed or attached to the container and eliminates the possibility of these labels being associated with the wrong container.
- Oregon is more stringent than the Federal program at OAR 340-101-0004(4) and (5) by requiring containers of solvent contaminated wipes be either laundered or disposed as hazardous waste. Oregon does not allow disposal of solvent contaminated wipes in a municipal landfill or non-hazardous waste incinerator.

Although the statute does not prevent states from adopting regulations that are broader in

scope than the Federal program, states cannot receive authorization for such regulations, and they are not federally enforceable. Oregon is broader in scope than the Federal program documented in this authorization action by requiring academic laboratories that opt into Subpart K to obtain an EPA identification number.

Oregon has identified regulatory language at OAR 340-100-0004(3) as broader in scope. At 40 CFR 261.4(a)(26)(i) and 261.4(b)(18)(i), EPA regulations exclude solvent-contaminated wipes from the definitions of solid waste and hazardous waste, respectively, so long as the wipes are (among other things) stored in containers labeled “Excluded Solvent-Contaminated Wipes.” Oregon specifies at OAR 340-100-0004(3) that such wipes may also be “labeled with equivalent wording describing the contents of the container and recognizing the exclusion[.]” EPA has evaluated this regulatory language and determined that it is functionally equivalent to the Federal program, so we are including it in this proposed action.

H. Who handles permits after the final authorization takes effect?

When the final authorization takes effect, Oregon will issue permits for all the provisions for which it is authorized and will administer the permits it issues. Permits issued by EPA prior to authorizing Oregon for these revisions would continue in force until the effective date of the State’s issuance or denial of a State hazardous waste management permit, at which time, the EPA would modify the existing EPA permit to expire at an earlier date, terminate the existing EPA permit, or allow the existing EPA permit to otherwise expire by its terms, except for those facilities located in Indian Country. The EPA will not issue new permits or new portions of permits for provisions for which Oregon is authorized after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which Oregon is not yet authorized.

I. How does today's action affect Indian Country (18 U.S.C. 1151) in Oregon?

Oregon is not authorized to carry out its hazardous waste program in Indian country within the State, which includes:

- All lands within the exterior boundaries of Indian reservations within or abutting the State of Oregon.
- Any land held in trust by the U.S. for an Indian tribe; and
- Any other land, whether on or off an Indian reservation, that qualifies as Indian country.

Therefore, this action has no effect on Indian country. EPA retains jurisdiction over Indian country and will continue to implement and administer the RCRA program on these lands.

J. What is codification and will EPA codify Oregon's hazardous waste program as proposed in this rule?

Codification is the process of placing citations and references to the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by adding those citations and references to the authorized State rules in 40 CFR Part 272. EPA is not proposing to codify the authorization of Oregon's changes at this time. However, EPA reserves the ability to amend 40 CFR Part 272, Subpart MM at a later date.

K. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action proposes to authorize State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action proposes to authorize pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to authorize State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), the EPA grants a state’s application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in proposing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA

has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this action proposes authorization of pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this proposed rule is not subject to Executive Order 12898.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: September 28, 2021.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

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